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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 431

CITY OF CORINTH, MISSISSIPPI, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR INTERVENOR, ALABAMA-TENNESSEE NATURAL GAS COMPANY, IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit dismissing the petition for review is reported at 268 F. 2d 10 and is printed in the appendix to the petition for a writ of certiorari (App. pp. 17-20).[1] The Federal Power Commission's order is not reported but is printed in the petition (App. pp. 21-25).

[1] This and other appendix ("App.") references are to the appendix to the petition for a writ of certiorari.

JURISDICTION

The judgment of the Court of Appeals was entered on June 29, 1959 (App. p. 34). The petition for a writ of certiorari was filed on September 25, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTION PRESENTED

Whether the Court below properly held that it had no jurisdiction to review an order of the Federal Power Commission, which order the Court determined to be interlocutory, procedural and ministerial, since the only legal effect of such order was to require the return to a pipeline's customers of any portion of proposed increased rates determined by the Federal Power Commission to be excessive.

STATUTE INVOLVED

The pertinent provisions of the Natural Gas Act of 1938, 52 Stat. 821, 15 U.S.C. 717, *et seq.*, are set forth in the appendix to the petition (pp. 28-33). However, there are errors in the provisions of the Act as appearing in the petition, so they are printed correctly as an appendix to this brief.

STATEMENT

The Petitioner, City of Corinth, Mississippi (Corinth) seeks review of a decision of the Court of Appeals for the Fifth Circuit dismissing Corinth's petition to review and set aside an order of the Federal Power Commission (Commission). Such order of the Commission was entered on July 18, 1957 in a proceeding arising out of a rate filing by this intervenor,

Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), with the Commission designed to increase its rates to compensate it for increases in its supplier's rates. The Commission suspended by order of February 13, 1957 the effectiveness of the increased rates until July 14, 1957 on which latter date they became effective upon motion filed in accordance with Section 4(e) of the Act.

Since the increased rates became effective as a matter of right upon motion at the end of the suspension period, the only purpose of the July 18th order and its total effect, as later explained more fully, was simply to require Alabama-Tennessee to assure the Commission and its resale customers that it would refund with interest any amounts collected through the increased rates which the Commission might determine after a hearing to be excessive.

The Court of Appeals found that the Commission's order was interlocutory, procedural and ministerial and that the grounds asserted by Corinth should first be considered and passed upon by the Commission. Accordingly, the Court below held that it had no jurisdiction stating that "the merits are not reached" and dismissed the petition for review.

Alabama-Tennessee owns and operates a natural gas pipeline system extending in a southeasterly direction from a point of connection in McNairy County, Tennessee, with the pipeline system of its sole supplier of natural gas, Tennessee Gas Transmission Company (Tennessee Gas), for a distance of approximately 140 miles through the northeastern corner of the State of Mississippi into the northern part of Alabama and terminating at the City of Huntsville, Alabama.

Through this pipeline system Alabama-Tennessee sells natural gas directly to industries for their own consumption and to various distributors who resell the gas at retail in their respective communities in the States of Tennessee, Mississippi, and Alabama. Corinth is one of Alabama-Tennessee's 14 resale distribution customers, the sale of gas to which is subject to the jurisdiction of the Commission. Corinth owns and operates the distribution system within the City. Because of its transportation and sale of natural gas in interstate commerce for resale, Alabama-Tennessee is a "natural-gas company" within the meaning of the Natural Gas Act and is subject to the jurisdiction of the Commission.

Alabama-Tennessee is a relatively new pipeline having first commenced operations in 1950. Its facilities were constructed and are operated pursuant to a certificate of public convenience and necessity issued by the Commission (7 F.P.C. 251, 257). As a condition of this certificate, Alabama-Tennessee was required to obtain Commission approval of its initial tariff and rates which it did (9 F.P.C. 849, 11 F.P.C. 75). Throughout the entire period of its operations Alabama-Tennessee has operated on a Commission-approved tariff of the type involved in the *Memphis* case[2] rather than individually-negotiated contracts. Pursuant to Commission authorizations the rates have been changed from time to time but the tariff has otherwise continued in effect without material revision. Similarly, Alabama-Tennessee's service agreements, although re-executed from time to time to provide for increased deliveries of gas, have not been changed in any other substantial respect.

[2] *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958).

The changes in rates from time to time have been required primarily to compensate Alabama-Tennessee for increases in its cost of purchased gas from its supplier, Tennessee Gas. On January 14, 1957 Tennessee Gas filed with the Commission for a further increase in its rates and Alabama-Tennessee, on the same day, filed its increased rates designed to pass on to its customers the increase sought by Tennessee Gas.

In response to the Commission's solicitation of the customers' views on Alabama-Tennessee's increased rates, Corinth requested that such rates be suspended and a hearing held to determine whether the rate increase was justified. This request was in conformity with the City's action in similar instances in the past. By order of February 13, 1957 the Commission took such action as requested by Corinth and others. It ordered a hearing for the purpose of determining the reasonableness of the rates and suspended their effectiveness until July 14, 1957—the maximum five-month period allowed under Section 4(e) of the Act.

Upon the expiration of the suspension period Alabama-Tennessee filed a motion pursuant to Section 4(e) of the Act to make the rates effective as of July 14, 1957. On July 18, 1957 the Commission entered its above-described order which was the subject of the proceedings in the Court below. Without first having attempted to become a party to the Commission's proceedings, Corinth filed on August 19, 1957 an application for rehearing of the July 18th order.

By letter of September 18, 1957 the Secretary of the Commission rejected and returned Corinth's application for rehearing stating that Corinth "is not a party to this proceeding and the order to which your application is addressed is not a final order but an interim

order in this proceeding" (R. 212). Consequently, the Commission has never had an opportunity to consider and pass upon the questions which Corinth sought to have reviewed by the Court below.[3] It is our position that the Court properly dismissed Corinth's petition for review.

ARGUMENT

The decision of the Court below was clearly correct, for the Commission's order was, as the Court held, "interlocutory, procedural and ministerial" and as a consequence, Corinth cannot by any stretch of the imagination be considered to be aggrieved by the order.[4] On the contrary, the Commission's order is for the specific benefit and protection of Corinth and the other resale customers of Alabama-Tennessee. We will also show that there is no conflict between the decision below of the Fifth Circuit Court of Appeals and decisions of the Tenth Circuit, as contended by petitioner. The rights of no one are determined finally by either the Commission's order or the Court's decision dismissing the petition for a review thereof.

I. The Decision Below Is Clearly Correct

Under Section 4(e) of the Act the Commission is authorized to enter upon a hearing concerning the

[3] All other resale customers have agreed to a settlement of the proceedings which settlement agreement is pending before the Commission.

[4] Alabama-Tennessee and the Commission both contended below that Corinth did not have sufficient standing to attack the Commission's order since it was not a "party to a proceeding" under the Act "aggrieved by an order issued by the Commission in such proceeding"—conditions precedent to maintaining a review proceeding under Section 19(b) of the Act.

lawfulness of any new rate filing proposing a change in an existing rate or charge. Pending such hearing and decision thereon the Commission may suspend the effectiveness of the new filing "but not for a longer period than five months beyond the time it would otherwise go into effect."

In the event that the Commission decides to suspend a new filing and it has not made a determination thereon at the expiration of the period of suspension then "on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service *shall* go into effect" (Emphasis supplied). Upon the filing of such a motion to make new rate schedules effective, the Commission is given the discretionary power by Section 4(e) to "require the natural-gas company to furnish a bond, to be approved by the Commission."

The Commission's order of July 18, 1957 which petitioner sought to have reviewed determined no one's rights or any of the issues in the proceedings which had previously been instituted by the Commission concerning the new rate filing. Although entitled "Order Making Effective Proposed Tariff Changes upon Filing of Undertaking to Assure Refund of Excess Charges" the total effect legally of the order was to require the submission by Alabama-Tennessee of a written undertaking to make refund of any amounts ordered by the Commission after a hearing. Clearly this was for the benefit of Corinth and all other jurisdictional customers.

It was not the July 18th order which made the new rate filing effective as of July 14, 1957. Upon the filing by Alabama-Tennessee of its motion, the new filing

automatically became effective by operation of the statute, and this would have been so irrespective of whether the Commission took any action with respect to the motion. Whether the Commission would require a bond or other assurance of the pipeline to make refunds was a matter lying wholly within the Commission's discretion.

The Commission has construed the language of Section 4(e) in such a manner as to leave no doubt that a natural gas company has an absolute right upon motion to make increased rates effective upon the expiration of the suspension period. In *El Paso Natural Gas Co.*, 18 F.P.C. 838, 839, the Commission held, in an order permitting rates to become effective under bond, as follows:

> "Under the statute, the effectiveness of the proposed change is made a matter of right and not a matter committed to permissive or discretionary Commission action. The purpose of the present order, accordingly, is (a) to insure the carrying out of this statutory requirement that each increased rate so made effective after suspension shall be subject to refund if, and to the extent that, the Commission later finds such rate unlawful; and (b) to give notice of the effectiveness of the increased rate, subject to refund."[5]

[5] This same statutory interpretation has been adhered to by the Commission in the following cases: *United Gas Pipe Line Company*, Docket No. G-12801 (January 20, 1958) 19 F.P.C. 119, 120; *Texas Eastern Transmission Corporation*, Docket No. G-12706 (February 3, 1958); *Texas Gas Transmission Corporation*, Docket No. G-12823 (March 27, 1958); *Colorado Interstate Gas Company*, Docket No. G-13541 (April 28, 1958); *Pacific Northwest Pipeline Corporation*, Docket No. G-13202 (April 28, 1958); *Algonquin Gas Transmission Company*, Docket No. G-12859, 19 F.P.C. 668; *Panhandle Eastern Pipe Line Company*, Docket No. G-14755 (September 9, 1958). See also: *Atlantic Seaboard Corp. v. Federal Power*

It is therefore apparent that the order complained of by Corinth was as the Court characterized it "interlocutory, procedural and ministerial." To require the Court below to accept jurisdiction to review the Commission's order of July 18, 1957 would be to impose upon the Court the necessity of making determinations on factual and legal matters concerning Alabama-Tennessee's new rate filing which the Natural Gas Act clearly contemplates should be passed upon by the Commission in the first instance. For example, the petitioner argues that it has a fixed rate contract. Such a matter is one, as stated in *Memphis* (358 U.S. 103, 114), "which involves matters peculiarly within the area of the Commission's special competence."

II. There Is No Conflict of Decisions

Petitioner contends that there is an irreconcilable conflict between the decision of the Court below and that of the Court of Appeals for the Tenth Circuit in *Cities Service Gas Company* v. *Federal Power Commission*, 255 F. 2d 860;[6] *cert. den.*, 358 U.S. 837, which

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Commission (CA-4, 1953), 201 F. 2d 568, 573; *Mississippi River Fuel Corp.* v. *Federal Power Commission* (CA-3, 1953), 202 F. 2d 899, 902.

Moreover, by Order No. 215 issued October 9, 1959 the Commission has promulgated a general rule applicable to suspensions of increased rates of independent producers whereby there is eliminated the necessity for the Commission to enter individual orders requiring the independent producer to provide a bond or agreement assuring the refund of any amounts determined by the Commission to be excessive. Under this new rule the rates become effective at the expiration of the suspension period upon the filing by the independent producer of a motion in conformity with Section 4(e) of the Act, together with a bond or other assurance by the producer that such refunds will be made as are required by the Commission.

[6] The excerpt at page 8 of the petition from this decision is not accurate.

latter decision relied, in part, on the same Court's decision in *Phillips Petroleum Company* v. *Federal Power Commission*, 227 F. 2d 470; *cert. den.*, 350 U.S. 1005.

There is definitely no conflict between these decisions. In the first place, neither the *Cities Service* nor the *Phillips* case even involved natural gas pipeline company rate filings under Section 4 of the Act. Both concerned determinations of the effective rate of the producers on June 7, 1954, the date of the Supreme Court's decision in *Phillips Petroleum Company* v. *State of Wisconsin*, 347 U.S. 672.

In the *Cities Service* case, Magnolia Petroleum Company filed with the Commission as a rate schedule its contract for the sale of natural gas to Cities Service, as required by the Commission's rules promulgated after the *Phillips* decision of the Supreme Court. This agreement provided for a base price of six cents per Mcf but orders of the Kansas Corporation Commission provided for an eleven-cent minimum price. Such orders were included as a part of Magnolia's rate filing. Magnolia contended that the eleven-cent price was effective as of June 7, 1954 and thereafter. Cities Service, on the other hand, was challenging through separate litigation in the State Court the validity of the minimum price order and urged the Commission to reject the filing.

By order of March 21, 1957, as modified May 17, 1957, the Commission accepted Magnolia's rate filing and thereby determined the price as of June 7, 1954 to be eleven cents. Despite the Supreme Court's decision after the filing had been made declaring that the Kansas Corporation Commission was without authority to fix the price of the gas sold by Magnolia to Cities Service, the Commission took the position that the ac-

ceptance of a rate schedule for filing is not a determination by the Commission as to the validity or reasonableness of the rate and that the order complained of was merely procedural and interlocutory and not subject to review. The Commission conceded that Cities Service should recover any excess payments in a proper action but contended that the Kansas order had been but a nullity in the filing and could not be a basis for relief to Cities Service. In other words, the Commission recognized the validity of Cities Service' claims of injury and its need for relief but contended that such relief must be obtained in some other manner.

The Court in that case rejected the Commission's views specifically on the ground that the Commission's order accepting the eleven-cent rate was the source of Cities Service' aggrievement. The Court stated (255 F. 2d at 863):

> "Petitioner has been compelled to pay eleven cents for its gas, and wrongfully so, because the Commission's acceptance of the rate schedule was pro forma the acceptance of the rate then being paid. To assert that petitioner's aggrievement lay with the invalid Kansas Corporation Commission order and not with the Power Commission's acceptance of Schedule 26 [the Kansas Corporation Commission order] is but to play with words. Petitioner was twice aggrieved and has properly and consistently pursued separate remedies. And, since petitioner's complaint lies in the action of the Power Commission in accepting a rate schedule which was not the effective rate on the critical date, petitioner could not and need not pursue an administrative remedy under Section 5 of the Natural Gas Act to show that the accepted rate was unjust and unreasonable."

That situation is far different from the one facing Corinth. By contrast, no rights of Corinth or anyone else were determined by the order which it seeks to have reviewed. Any entitlement which it may have to relief from the rates of which it complains can only be afforded it in the pending proceedings before the Commission which were instituted in the manner which Corinth had requested.

The *Phillips* decision (227 F. 2d 470) involves a highly complicated assortment of problems stemming from the Commission's assertion of jurisdiction over Phillips as a result of the Supreme Court's decision. But as in the *Cities Service* case, the orders involved purported "to establish with finality the wholesale rates which Phillips was authorized to charge Michigan [Wisconsin Pipe Line Company] on June 7, 1954 and thereafter until changed by order of the Commission pursuant to hearing" (227 F. 2d at 475). Again in contrast to the situation here, the orders had a finality which does not exist in the Alabama-Tennessee order.

It is apparent therefore that the Tenth Circuit Court of Appeals' decisions are readily distinguishable from the decision of the Court below in that the decisions involve highly dissimilar factual settings and entirely different legal questions.

III. There Is No Important Question of Federal Law

As Corinth states in its petition (p. 12) the very narrow question involved here is "purely a question of law involving the construction of a contract." This question is later referred to (p. 14) as a "simple question of law." Accordingly, there is not here presented any matter sufficiently significant for the consideration of the Supreme Court.

With respect to whether Corinth's agreement provides as it contends for a "fixed rate" not subject to change (Pet. pp. 4, 5, 9, 12, 14, 15) or for a "going rate" subject to change as a result of filings under Section 4 of the Act, this matter was disposed of in this Court's recent decision in the *Memphis* case (358 U.S. 103). The contract language there considered by the Court in the light of the provisions of Section 4 of the Act is, as Corinth acknowledges (Pet. p. 3), strikingly similar to that in the Corinth agreement.[7]

The only possible question of Federal law which could have any application to the circumstances here was settled by the Supreme Court in the *Memphis* case decided only a few months ago.

[7] The pertinent language in the agreements involved in *Memphis* and in this case are as follows:

Memphis (358 U.S. at 105).

"All gas delivered hereunder shall be paid for by Buyer under Seller's Rate Schedule [the appropriate rate schedule designation is inserted here], *or any effective superseding rate schedules*, on file with the Federal Power Commission. This agreement in all respects shall be subject to the applicable provisions of such rate schedules and to the General Terms and Conditions attached thereto and filed with the Federal Power Commission which are by reference made a part hereof."

Corinth (App. p. 26)

"ARTICLE V

"Prices and Rate Schedules

"1. The rates to be paid for natural gas delivered hereunder are subject to the jurisdiction of the Federal Power Commission and shall be those contained in Rate Schedule G-1 on file with the Federal Power Commission and lawfully in effect from time to time pursuant to the provisions of the Natural Gas Act.

"2. This agreement in all respects shall be and remain subject to the provisions of the applicable Rate Schedules and General Terms and Conditions attached to the rate schedules filed with the Federal Power Commission, all of which are by reference made a part hereof."

It is equally apparent that Corinth was not damaged by the order complained of but is actually protected by it, being assured by such order of the refund with interest of any amounts collected through the filed rates and found by the Commission to have been unreasonable.

CONCLUSION

Alabama-Tennessee respectfully submits that for the foregoing reasons Corinth's petition for a writ of certiorari should be denied.

Respectfully submitted,

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October 23, 1959

APPENDIX

Excerpts from the Natural Gas Act

RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

SEC. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty

days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules, and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification,

or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U. S. C. § 717c]

. . . . . .

REHEARING; COURT REVIEW OF ORDERS

SEC. 19. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the

original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. [52 Stat. 831 (1938); 15 U. S. C. § 717r]

* * * * * * * * * * *

GENERAL PENALTIES

SEC. 21. (a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this act, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $500 for each and every day during which such offense occurs. [52 Stat. 833 (1938); 15 U. S. C. § 717t]